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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,369	04/05/2001	Wolfgang Schulz	SCHULZ 2	4003
1444	7590	08/11/2005	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			PIZIALI, ANDREW T	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/826,369	<b>Applicant(s)</b> SCHULZ, WOLFGANG	
	<b>Examiner</b> Andrew T. Piziali	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply.**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 11-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Appeal Brief***

1. In view of the appeal brief filed on 7/5/2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection have been set forth below.
2. To avoid abandonment of the application, appellant must exercise one of the following two options:
  - (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
  - (2) request reinstatement of the appeal.
3. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown et al. (hereinafter referred to as Shown).

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Regarding claims 1-2, 4 and 11-12, Hermes discloses a woven sail/ awning fabric comprising substantially entirely polyester yarns (see entire document including column 6, lines 21-62). Hermes is silent with regards to the type of polyester yarn, therefore, it would have been necessary and thus obvious to look to the prior art for conventional polyester awning yarns. Ferrari provides this conventional teaching showing that it is known in the art to use continuous filaments (see entire document including column 4, lines 40-48). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the polyester yarns in the form of continuous filament yarns motivated by the expectation of successfully practicing the invention of Hermes.

Hermes discloses that the polyester fabric may be dyed (column 3, lines 10-22), but Hermes does not specifically mention anthraquinone-based disperse dye. Speck (see entire document including column 1, lines 15-18 and lines 45-59 and the Examples), Hildreth (see entire document including column 1, lines 16-60 and column 2, lines 3-16), and Shown (see entire document including columns 1, lines 14-26 and column 3, line 73 through column 4, line 51) each disclose a process of wet-dyeing polyester with an anthraquinone-based disperse dye. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wet-dye the polyester fabric of Hermes by any of the processes disclosed by Speck, Hildreth, or Show, because the dye would provide the awning fabric with a desired color having good fastness properties.

Regarding claim 2, Hermes is silent with regards to a specific awning weight, therefore, it would have been necessary and thus obvious to look to the prior art for conventional awning weights. Ferrari provides this conventional teaching showing that it is known in the awning

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fabric art to use a weight per unit area of about 70 to 350 g/sqm (column 4, lines 40-59).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric with a weight per unit area of about 70 to 350 g/sqm motivated by the expectation of successfully practicing the invention of Hermes.

Regarding claim 4, Hermes discloses that a UV block may be provided (column 3, lines 23-62).

Regarding claims 11-12, Hermes discloses that the woven polyester textile material is an awning (column 6, lines 21-29). The awning disclosed by Hermes may be used as a sun room awning, therefore, the awning disclosed by Hermes is considered a sun room awning.

6. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 4 and 11-12 above, and further in view of JP Publication No. 06-192972 to Uchida et al. (hereinafter referred to as Uchida).

Regarding claims 5 and 6, Hermes discloses that any desired dye may be used that is compatible with polyester (column 4, lines 25-51), but Hermes does not appear to specifically mention the use of a triazine-derivative based UV block. Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a triazine-derivative based UV block, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester and

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because it is within the general skill of a worker in the art to select a known UV block on the basis of its suitability.

Regarding claim 6, Hermes does not mention the shape of the yarn, but the examiner takes Official Notice that yarns conventionally have round cross sections. Considering that Hermes fails to teach or suggest an unconventional yarn shape, it appears that the yarn of Hermes possesses a round cross section.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown in view of JP Publication No. 06-192972 to Uchida as applied to claims 5 and 6 above, and further in view of USPN 5,565,264 to Howland.

Hermes does not specifically mention the shape of the yarn, but Howland discloses that it is known in the sail/awning art to use round yarns (column 2, lines 21-39 and column 3, lines 56-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Hermes round, as taught by Howland, because round polyester yarns are conventionally used, provide structural support and stability, and because it is within the general skill of a worker in the art to select a known yarn cross sectional shape on the basis of its suitability.

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8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 4 and 11-12 above, and further in view of USPN 4,719,954 to Curtis et al. (hereinafter referred to as Curtis).

Hermes does not mention articulated arms, but Curtis discloses that it is known in the art to construct an awning with articulated arms (see entire document including Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide articulated arms to the awning of Hermes, because such a modification would have been motivated by the desire to improve the functionality of the awning.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 4 and 11-12 above, and further in view of USPN 5,565,264 to Howland.

Hermes does not specifically mention the shape of the yarn, but Howland discloses that it is known in the sail/awning art to use round yarns (column 2, lines 21-39 and column 3, lines 56-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Hermes round, as taught by Howland, because round polyester yarns are conventionally used, provide structural support and stability, and because it is within the general skill of a worker in the art to select a known yarn cross sectional shape on the basis of its suitability.

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Hermes is silent with regards to specific weft/warp density, therefore, it would have been necessary and thus obvious to look to the prior art for conventional weft/warp density. Howland provides this conventional teaching showing that it is known in the sail/awning art to use a densely woven fabric having a weft density of about 35-50 filaments per cm and a warp rate of about 20-25 filaments per cm to provide the woven fabric with high resistance to penetration (column 2, lines 21-39). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the woven fabric with a weft density of about 35-50 filaments per cm and a warp rate of about 20-25 filaments per cm motivated by the expectation of successfully practicing the invention of Hermes and to provide the woven fabric with high resistance to penetration.

Regarding delustrants and lubricants, Hermes does not mention any delustrants or lubricants, therefore, it appears that the awning fabric contains an amount of zero delustrants and lubricants.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown in view of USPN 5,565,264 to Howland as applied to claim 13 above, and further in view of JP Publication No. 06-192972 to Uchida.

Hermes discloses that any desired dye may be used that is compatible with polyester (column 4, lines 25-51), but Hermes does not appear to specifically mention the use of a triazine-derivative based UV block. Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire



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document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a triazine-derivative based UV block, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester and because it is within the general skill of a worker in the art to select a known UV block on the basis of its suitability.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 4 and 11-12 above, and further in view of USPN 5,565,264 to Howland in view of USPN 5,652,057 to Delker.

Hermes does not specifically mention the shape of the yarn, but Howland discloses that it is known in the sail/awning art to use round yarns (column 2, lines 21-39 and column 3, lines 56-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Hermes round, as taught by Howland, because round polyester yarns are conventionally used, provide structural support and stability, and because it is within the general skill of a worker in the art to select a known yarn cross sectional shape on the basis of its suitability.

Hermes is silent with regards to specific weft/warp density, therefore, it would have been necessary and thus obvious to look to the prior art for conventional weft/warp density. Howland provides this conventional teaching showing that it is known in the sail/awning art to use a densely woven fabric having a weft density of about 35-50 filaments per cm and a warp rate of about 20-25 filaments per cm to provide the woven fabric with high resistance to penetration (column 2, lines 21-39). Therefore, it would have been obvious to one having ordinary skill in

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the art at the time the invention was made to make the woven fabric with a weft density of about 35-50 filaments per cm and a warp rate of about 20-25 filaments per cm motivated by the expectation of successfully practicing the invention of Hermes and to provide the woven fabric with high resistance to penetration.

Regarding delustrants and lubricants, Hermes does not mention any delustrants or lubricants, but Delker discloses that delustrants and lubricants may be added to polyester in an amount of no greater than 0.05% (see entire document including column 9, lines 35-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include these additives in the polyester of Hermes, motivated by the desire to improve the properties of the polyester fabric.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown in view of USPN 5,565,264 to Howland in view of USPN 5,652,057 to Delker as applied to claim 13 above, and further in view of JP Publication No. 06-192972 to Uchida.

Hermes discloses that any desired dye may be used that is compatible with polyester (column 4, lines 25-51), but Hermes does not appear to specifically mention the use of a triazine-derivative based UV block. Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a triazine-derivative based UV block, as taught by Uchida, because

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the UV block would improve the light fastness of the dyed polyester and because it is within the general skill of a worker in the art to select a known UV block on the basis of its suitability.

13. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 4 and 11-12 above, and further in view of USPN 6,146,759 to Land.

Hermes is silent with regards to specific weft/warp density, therefore, it would have been necessary and thus obvious to look to the prior art for conventional weft/warp density. Land provides this conventional teaching showing that it is known in the woven polyester fabric art to use a densely woven fabric having a weft density of about 35-50 filaments per cm and a warp rate of about 20-25 filaments per cm (column 5, lines 33-52). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the woven fabric with a weft density of about 35-50 filaments per cm and a warp rate of about 20-25 filaments per cm motivated by the expectation of successfully practicing the invention of Hermes.

Regarding delustrants and lubricants, Hermes does not mention any delustrants or lubricants, therefore, it appears that the awning fabric contains an amount of zero delustrants and lubricants. Regarding the claimed round cross section, Hermes does not mention the shape of the yarn, but the examiner takes Official Notice that yarns conventionally have round cross sections. Considering that Hermes fails to teach or suggest an unconventional yarn shape, it appears that the yarn of Hermes possesses a round cross section.

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14. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown in view of USPN 6,146,759 to Land as applied to claim 13 above, and further in view of JP Publication No. 06-192972 to Uchida.

Hermes discloses that any desired dye may be used that is compatible with polyester (column 4, lines 25-51), but Hermes does not appear to specifically mention the use of a triazine-derivative based UV block. Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a triazine-derivative based UV block, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester and because it is within the general skill of a worker in the art to select a known UV block on the basis of its suitability.

15. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown as applied to claims 1-2, 4 and 11-12 above, and further in view of USPN 6,146,759 to Land in view of USPN 5,652,057 to Delker.

Hermes is silent with regards to specific weft/warp density, therefore, it would have been necessary and thus obvious to look to the prior art for conventional weft/warp density. Land provides this conventional teaching showing that it is known in the woven polyester fabric art to use a densely woven fabric having a weft density of about 35-50 filaments per cm and a warp

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rate of about 20-25 filaments per cm (column 5, lines 33-52). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the woven fabric with a weft density of about 35-50 filaments per cm and a warp rate of about 20-25 filaments per cm motivated by the expectation of successfully practicing the invention of Hermes.

Regarding delustrants and lubricants, Hermes does not mention any delustrants or lubricants, but Delker discloses that delustrants and lubricants may be added to polyester in an amount of no greater than 0.05% (see entire document including column 9, lines 35-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include these additives in the polyester of Hermes, motivated by the desire to improve the properties of the polyester fabric.

Regarding the claimed round cross section, Hermes does not mention the shape of the yarn, but the examiner takes Official Notice that yarns conventionally have round cross sections. Considering that Hermes fails to teach or suggest an unconventional yarn shape, it appears that the yarn of Hermes possesses a round cross section.

16. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,943,105 to Hermes in view of USPN 4,052,521 to Ferrari in view of anyone of USPN 2,757,064 to Speck, USPN 3,203,751 to Hildreth, or USPN 3,390,947 to Shown in view of USPN 6,146,759 to Land in view of USPN 5,652,057 to Delker as applied to claim 13 above, and further in view of JP Publication No. 06-192972 to Uchida.

Hermes discloses that any desired dye may be used that is compatible with polyester (column 4, lines 25-51), but Hermes does not appear to specifically mention the use of a triazine-

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derivative based UV block. Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a triazine-derivative based UV block, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester and because it is within the general skill of a worker in the art to select a known UV block on the basis of its suitability.

### ***Response to Arguments***

17. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

*g-7 8/1/05*  
**ANDREW T. PIZIALI**  
**PATENT EXAMINER**

  
**TERREL MORRIS**  
**SUPERVISORY PATENT EXAMINER**  
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